

An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the Mariposa County Sheriff's Office.

§ 34.10 Saddle and pack animals.

The use of saddle and pack animals is prohibited without a permit from the Superintendent.

§ 34.11 Boating operations.

The launching or operation of a motor boat is prohibited.

§ 34.12 Information collection.

The information collection requirements contained in §§ 34.6, 34.8 and 34.10 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024-0026. This information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits, and to gather information. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

PART 51—CONCESSION CONTRACTS AND PERMITS

Sec.

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51.8 Public availability of concessions information.

51.9 Information collection.

AUTHORITY: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly the Concessions Policy Act of 1965, 16 U.S.C. 20 *et seq.*, and 16 U.S.C. 3.

SOURCE: 57 FR 40503, Sept. 3, 1992, unless otherwise noted.

§ 51.1 Authority.

Concession contracts and permits are awarded by the Director on behalf of the Secretary of the Interior pursuant to the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, the Concessions Policies Act of 1965, 16 U.S.C. 20 *et seq.*, and 16 U.S.C. 3. All concession contracts and permits are subject to the requirements of this part 51. They are not Federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable to Federal procurement actions. Commercial use licenses are not concession contracts or permits, and, particularly, a commercial use licensee (or a person holding a similar nonconcession authorization) has no right of preference in renewal.

§ 51.2 Policy.

It is the policy of the Secretary of the Interior, as mandated by law, to permit concessions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

§ 51.3 Definitions.

The following definitions shall apply to this part 51:

(a) *Concession contracts* and *concession permits* (or *contracts* and *permits*) are agreements between the Director and a concessioner whereby the concessioner agrees to provide certain visitor accommodations, facilities or services within a park area under the administration of the Director. The Director authorizes concession operations by both contracts and permits. Contracts are used for larger operations and permits for those of less complexity. Throughout this document, wherever the term *contract* or *concession contract* are used, they shall, unless otherwise indicated, refer to both types of authorization documents.

(b) *Right of Preference* refers to the right of an existing satisfactory concessioner to a preference in the extension or renewal of its contract or a new contract concerning all or part of substantially the same accommodations, facilities and services as provided by concessioner under the terms of its existing contract if the Director chooses to continue to authorize all or part of such accommodations, facilities and services in an extended, renewed or new contract as necessary and appropriate concession activities.

(c) *Preferential Right* refers to a contractual right which may be included in concession contracts (not permits) in the discretion of the Director to provide new or additional visitor accommodations, facilities and services of the same character as authorized under the concessioner's contract if the Director considers such new or additional concession activities necessary and appropriate for the accommodation and convenience of the public. A preferential right to new or additional services shall be granted only upon a specific written finding by the Director that the granting of such a contractual right because of exceptional circumstances is in the public interest.

[57 FR 40503, Sept. 3, 1992, as amended at 62 FR 30235, June 3, 1997]

§51.4 Solicitation and award of concession contracts where no right of preference exists.

The following procedures shall be applicable to the solicitation and award of concession contracts, including renewals and extensions of concession contracts, where no right of preference to the contract exists:

(a) The Director shall issue a prospectus soliciting proposals describing the concession operation to be authorized, the material terms and conditions of the proposed concession contract, and the principal factors considered in selection. Advertisement of the availability of the concession opportunity shall be published in the Commerce Business Daily and, for contracts or permits requiring Congressional review pursuant to 16 U.S.C. 1a-7(c), in the FEDERAL REGISTER. Notices may also be published, if appropriate, in local or national newspapers or trade maga-

zines. The notice will be distributed to interested parties and organizations. In order to encourage minority and women-owned businesses to compete for concession contracts, the National Park Service shall provide maximum allowable information and assistance to minority and women-owned business. The prospectus will be made available upon request to all interested parties and will allow a reasonable period of time for submission of offers with a minimum of 60 days unless a written determination is made that a shorter period is necessary because of exceptional circumstances. All offers received shall be evaluated by the Director, and the offeror submitting the offer considered best by the Director on an overall basis shall be awarded the contract.

(b) The principal factors to be considered in selection of the best offer shall be:

(1) The experience and related background of the offeror;

(2) The offeror's financial capability; and

(3) Conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor.

Secondary factors shall include franchise fee offered and other factors as may be specified.

(c) The Director may solicit from any offeror additional written information or clarification of an offer, and may extend the solicitation period in his or her discretion. The Director may choose to reject all offers received at any time and resolicit or cancel the solicitation altogether in his or her discretion. Any material information made available to any offeror or other party by the Director is to be made available to all offerors, and will be available to the public upon request.

(d) The execution of the final contract by the selected offeror shall occur promptly upon award within a time period established by the Director. Failure by the selected offeror to execute the final contract in this period shall result in cancellation of the award by the Director and resolicitation or award to another offeror. Substantive amendments which improve the proposed terms and conditions of the contract for the offeror, as compared to

those set forth in the prospectus, may be permitted only after solicitation of the amended concession opportunity for an appropriate period of time. Changes benefiting only the Government do not require solicitation. Concession contracts with anticipated annual gross receipts in excess of \$100,000 or of five (5) years or more in duration, shall be forwarded to the Congress pursuant to 16 U.S.C. 1a-7(c) prior to execution by the Director. The Director may, in his or her discretion, terminate the award of a concession contract at any time prior to execution by the Government and resolicit or cancel the solicitation. No offeror or other interested party shall be considered to have obtained compensable or other legal rights as a result of a resolicited or canceled solicitation or award of a concession contract.

(e) The terms and conditions of the solicitation must represent the requirements of the Director and not be developed to accommodate the capabilities or limitations of any particular party.

(f) Upon a written determination that exceptional circumstances warrant waiver of the procedures described in this subsection in the public interest, to protect visitor or park resources or otherwise, the Director may negotiate a concession contract with any qualified party without public notice or advertising.

[57 FR 40503, Sept. 3, 1992; 57 FR 46509, Oct. 9, 1992]

§ 51.5 Solicitation and award of concession contracts where a right of preference exists.

Except as follows, the procedures described in § 51.4 shall apply to the solicitation and award of concession contracts, including renewals and extensions of contracts, where an existing satisfactory concessioner is entitled to a right of preference to the contract:

(a) Prior to the issuance of a prospectus, the Director shall determine, based on annual evaluations conducted during the term of the contract, whether or not the existing concessioner has performed in a satisfactory, marginal, or unsatisfactory manner over the term of the contract. The annual evaluations shall be based on the conces-

sioner's operational performance as well as its compliance with the terms and conditions of the contract. In addition, if the concessioner is rated unsatisfactory in the year prior to the issuance of the prospectus, or marginal during the two years preceding the issuance of the prospectus, the concessioner's overall performance shall not be considered satisfactory. If the concessioner's overall performance over the term of the concession contract is determined to have been satisfactory, it is entitled to the preference in the renewal of its contract as described herein. However, if, after a prospectus which recognizes a right of preference is issued, a concessioner is rated pursuant to an annual evaluation as unsatisfactory by the Director, the Director shall cancel the solicitation or contract award and reissue the solicitation without a right of preference. A concessioner whose overall performance has been less than satisfactory as determined by the Director is not entitled to a right of preference. Additionally, if a concessioner has or will have operated less than two (2) consecutive years prior to the expiration of its contract as a result of acquiring, subsequent to the effective date of these regulations, a concession, or a controlling interest in a concession, as described in § 51.7(b) hereof, by a transfer, purchase, assignment, or otherwise, the concessioner shall not be entitled to a right of preference in the renewal of its contract. For the purposes of this section, the concessioner's first day of operation will be considered the date on which the Director approved in writing the acquisition in question. The Director may, in his or her discretion, grant an exception from this two (2) year provision if the Director determines that the transaction was a result of circumstances beyond the selling or transferring concessioner's control.

(b) A prospectus will be developed by the Director and will describe the existing satisfactory concessioner's right of preference, if any, as well as the material terms and conditions under which the Director proposes to award the contract.

(c) The concessioner with a right of preference shall be required to submit a responsive offer (a timely offer which

the Director determines meets the terms and conditions of the prospectus) pursuant to the prospectus. If the concessioner fails to do so, the right of preference shall be considered to have been waived and the contract shall be awarded to the party submitting the best responsive offer. If no other responsive offers were received, the concession opportunity shall be resolicited and no right of preference shall apply to the concession opportunity unless the concession opportunity is resolicited upon terms and conditions that are substantially different from the terms and conditions of the initial prospectus. Such award to another responsive offeror or resolicitation without a right of preference shall also occur where a concessioner with a right of preference is awarded a contract but fails to execute it within the time period established by the Director.

(d) All responsive offers received pursuant to a prospectus where a right of preference is applicable to the concession opportunity shall be evaluated on an equal basis. If an offer other than a responsive offer of the existing satisfactory concessioner is determined to be the best offer, the party submitting the best offer will be awarded the contract or permit, provided that the existing satisfactory concessioner shall be given an opportunity to amend its offer to meet the terms and conditions of the best offer. If the existing satisfactory concessioner does so within the period of time allowed by the Director, and its offer, as amended, is, in the judgment of the Director, at least substantially equal to the best offer and the existing concessioner is capable of carrying out its terms, the existing concessioner shall be selected for award of the contract upon the amended terms and conditions.

(e) The requirement for public notice and evaluation of offers received may not be waived.

§ 51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

Where the Director seeks to authorize new or additional accommodations, facilities and services of generally the same character as provided by an exist-

ing satisfactory concessioner in a park area, and such concessioner by concession contract has a right to provide such additional services, the Director independently shall develop a description of the new or additional services and the terms and conditions upon which they are to be provided without reference to any private party, including the existing concessioner, and give the existing concessioner a reasonable opportunity to review such descriptions to determine if it wishes to provide the services. If so, the Director shall authorize the additional services by amendment to the concessioner's contract. If the existing concessioner does not agree to provide the additional services upon the terms and conditions described, the Director shall authorize the additional services to be provided by a new concessioner under substantially the same terms and conditions and pursuant to the procedures of § 51.4 hereof.

§ 51.7 Sale, assignment or encumbrance of concession contracts and assets.

(a) Concession contracts, or operations authorized thereby, controlling interests therein, or assets of a concessioner, may not be transferred, sold, assigned, or encumbered in any manner, including, but not limited to, stock purchases, mergers, consolidations, reorganizations, mortgages, liens or collateralization, except with the prior written approval of the Director. Such approval is not a matter of right to the concessioner. Transfers, sales, assignments, or encumbrances consummated in violation of this requirement shall be considered null and void by the Director and a material breach of the contract resulting in termination of the contract for cause.

(b) The term "controlling interest" as used herein means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities so as to permit exercise of managerial authority over the actions and operations of the concessioner or election of a majority of the Board of Directors

of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, beneficial ownership of the capital assets of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner. In other circumstances, the term refers to any arrangement under which a third party gains the ability to exercise managerial authority over the actions operations of the concessioner.

(c) Prior to consummating any transaction which may constitute the type of transaction described in subsection (a) hereof, the concessioner will request the Director in writing to review the transaction and provide the Director the following information:

(1) All instruments proposed to implement the transaction;

(2) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(3) A narrative description of the proposed transaction and the operational plans for conducting the operation;

(4) A statement as to the existence of any litigation questioning the validity of the proposed transaction;

(5) A description of the management qualifications and financial background of the proposed transferee, if any;

(6) A statement as to whether the proposed transaction constitutes the sale, assignment or transfer of a controlling interest as described herein and the particulars thereof;

(7) A detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial statements (a "forecast") that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Director that the purchase price is reasonable based on the objective of having a satisfactory concession operation that will generate a reasonable profit over the remaining term of the contract, with rates to the public not exceeding existing approved rates;

(8) A schedule which allocates in detail the purchase price to the assets acquired, together with the basis for the allocation;

(9) If the transaction may result in an encumbrance on the concessioner's assets, full particulars of the terms and conditions of the encumbrance; and

(10) Such other information as the Director may require.

The Director may waive portions of these documentation requirements in circumstances where particular documents are considered unnecessary for the Director's review purposes.

(d) The Director may choose to disapprove a transaction as described herein in his or her discretion or may place appropriate conditions on any approval, including modification of the terms and conditions of the concession contract, as a condition of approval. Among other circumstances, the Director may choose not to approve a transaction if the concessioner does not accept appropriate modifications intended to assure that consideration flowing to the Government under the contract is consistent with the probable value of the privileges granted by the contract. The Director shall not approve a transaction that the Director considers may result in decreased quality of service to the public, the lack of a reasonable opportunity for profit over the remaining term of the contract, or in rates higher than comparable rates being charged to the public. Further, the Director shall not approve a transaction if a significant portion of the purchase price is attributable either directly or indirectly to intangible assets or values emanating from the privileges granted by the concession contract (including, but not limited to, a right of preference in contract renewal, user days, allocated entries or trips, and low fees and charges). 16 U.S.C. 3 and certain concession contracts contain provisions which limit the purposes for which contracts may be encumbered. Such limitations are an element of the Director's review of such transactions. In addition, the Director shall not exercise the authorities contained in this section with respect to concession contracts in effect prior to the effective date of these regulations if the Director considers that such exercise would constitute a material breach of the terms of the concession contract at issue.

§ 51.8 Public availability of concessions information.

Among other information which may be required by contract or otherwise, the following information shall be contained in the financial statements submitted to the Director by a concessioner and shall be made available to the public by the Director: Gross receipts broken out by department for the 3 most recent years; franchise fees charged broken out by building use fee and percentage fee for the 3 most recent years; merchandise inventories for the 3 most recent years; and the depreciable fixed assets and net depreciable fixed assets of the concessioner. Other information may also be made available to the public to the extent permitted by law. The authority in this section shall not be exercised by the Director with respect to contracts in effect prior to the effective date of these regulations if the Director determines that such exercise would constitute a material breach of the concession contract at issue.

§ 51.9 Information collection.

(a) The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3051 *et seq.* and assigned clearance numbers 1024–0095 (contracting procedures, §§ 51.4–51.6), and 1024–0096 (sales and transfers, § 51.7). Response is required to obtain a benefit in accordance with 16 U.S.C. 20, *et seq.*

(b) The public reporting burden for the collection of information for the purpose of preparing an offer in response to a contract solicitation is estimated to average 80 hours per offer. The public reporting burden for the collection of information for the purpose of reporting a sale or transfer of a concession operation is estimated to be 160 hours for a large operation, and 32 hours for a small operation. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol Street, NW., Washington, DC 20002; and the Office of Management and Budget,

Paperwork Reduction Act (1024–0095 and 1024–0096), Washington, DC 20503.

[57 FR 40503, Sept. 3, 1992, as amended at 58 FR 36598, July 8, 1993]

PART 59—LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES

Sec.

59.1 Applicability.

59.2 Information collection.

59.3 Conversion requirements.

59.4 Residency requirements.

59.5–59.6 [Reserved]

AUTHORITY: Sec. 6, L&WCF Act of 1965 as amended; Pub. L. 88–578; 78 Stat. 897; 16 U.S.C. 4601–4 *et seq.*

SOURCE: 51 FR 34184, Sept. 25, 1986, unless otherwise noted.

§ 59.1 Applicability.

These post-completion responsibilities apply to each area or facility for which Land and Water Conservation Fund (L&WCF) assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement between NPS and the State. Responsibility for compliance and enforcement of these provisions rests with the State for both State and locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the Department of the Interior. In many instances, this mutually agreed to area exceeds that actually receiving L&WCF assistance so as to assure the protection of a viable recreation entity. For leased sites assisted under L&WCF, compliance with post-completion requirements of the grant ceases following lease expiration unless the grant agreement calls for some other arrangement.

§ 59.2 Information collection.

The information collection requirements contained in § 59.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*